



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

## TWO YEARS OF DEMOCRATIC DIPLOMACY.

BY SENATOR CUSHMAN K. DAVIS, OF MINNESOTA.

---

THE conduct of our foreign relations during the last two years has not reflected honor upon this country. It is proposed to vindicate this statement by a brief consideration of several conspicuous incidents.

The existing law lays a duty of one-tenth of a cent per pound on sugars which are imported from or are the product of any country which pays a bounty on their exportation. Against this the German Ambassador protested as a violation of our treaty with Prussia, concluded in 1828, which provides in substance, first, that duties shall not be higher than "on the like articles being the product or manufacture of any other foreign country," and, second, that any particular favor granted by either party to any other nation shall immediately become common to the other party. The Secretary of State sustained the validity of this contention, and so advised the President. The consequences of this construction are so serious, the limitations which it allows the treaty-making power to impose on the general legislative power are so restrictive, that its correctness cannot be admitted, except upon the clearest demonstration. It is subject to the following, among many objections.

The treaty contemplates only special and isolated favors to be extended gratuitously in some particular instances to some favored nation. That Germany, paying the bounty, should be entitled to the benefits of an advantage inuring to many other nations which pay no bounty, not as a concession to any of them, but a mere incidental and collateral result from an act of legislation upon a matter of internal concern, was never contemplated by the contracting parties, nor does the treaty upon any fair construction allow it. This is plain from the terms of the treaty, which import

only special and particular favors to some particular nation. Upon principles long since settled, such provisions in treaties are not restrictive of the power of either nation to legislate for the benefit of its own internal concerns, such as the protection and encouragement of its domestic industries. The present case falls within that principle. The production of sugar is an exceedingly important industry of the United States. The tariff law of 1890 granted a bounty to stimulate production, and to enable the producer to compete with Germany and the other nations who by paying such bounties had created an immense output. The act of 1894 took away this bounty from the American producer. As compensation in some degree, and to enable him to compete with the same foreign producers, and, also, as a measure for revenue, the duty of which Germany complains was imposed by the act of 1894. That, as an incidental effect, this revenue measure of internal policy may be beneficial to all nations which do not pay bounties does not constitute a breach of the stipulations of the treaty with Prussia. If this is not the correct view, it is most certain that the power of Congress to legislate in matters of revenue and internal concern can be suspended, impaired, or destroyed by the exercise of the treaty-making power.

The imposition of an export duty on sugar by Germany will, under circumstances easily to be suggested, become inimical to its production in this country. That policy may become, in fact, it has become to some degree, potent to break down production in other countries, and thus to enable Germany at some time to control the price. So that, upon the contention of Germany and the acquiescence of the Secretary that such an internal regulation is, because of its incidental effect, a breach of the treaty, it follows that Germany, did before the passage of the act of which she complains, place herself in the same hostile position of discrimination which she charges the United States with assuming, and cannot complain of the infraction of an obligation which had previously been broken by her.

The vexatious and retaliatory policy of Germany by which, as an act of reprisal against our revenue legislation, the introduction into that Empire of our meat products has been obstructed to the point of practical prohibition, is notorious. The exercise of the police power is the pretext; the determination to retaliate by exclusion is the cause. That other nations whose products are not thus

excluded will be benefited by this policy to the degree to which the United States will be injured is very plain. On the very reasons of Germany's contention against us, as stated by her representative, and improvidently admitted by the Secretary of State, the answer that should have been made by that officer to the protest was conclusive and obvious.

The question receives further illustration by a reclamation made by Germany against another provision of the law of 1894, which provides that any country admitting American salt free shall be entitled to the free admission of its salt into this country, and that the salt of any country which imposes a duty on our salt shall be dutiable here. Germany imposes a duty on salt exported from the United States. Shortly after the Secretary had advised the President respecting the sugar tax, the German Ambassador made protest against the imposition of the duty upon German salt upon the same grounds that he had taken as to sugar. He asserted that while Germany apparently levied a duty, it was in reality an excise tax, and that, therefore, German salt could not rightfully be subjected to duties when exported to the United States. If this position is correct, it also invalidated his contention as to sugar, and afforded the State Department a conclusive answer to it out of his own argument. The Attorney-General correctly advised that the salt is dutiable, and it also follows from his opinion that the conclusion of the Secretary as to sugar is without support by any argument except special pleading.

The relations of reciprocity established between the United States and many nations under the provisions of the tariff act of 1890 were destroyed utterly by the act of 1894. The results of those relations, even within the short period of their existence, were most encouraging. It was clearly apparent that, if allowed to continue, they would within a few years enormously increase our commerce, including our carrying trade, with the nations and colonies of the Western Hemisphere. The Democratic party, which has always clamored for foreign commerce and insisted that protective legislation destroys it, struck down this beneficent system of reciprocity by a single blow. The effect of this destruction upon our trade with Cuba illustrates its inevitable detriment to our commerce with all other nations or colonies with which we had entered into relations of reciprocity under the act of 1890. The existing tariff law went into effect August 28, 1894. Under

reciprocity with Cuba the duties on flour and breadstuffs imported from the United States into that island for each 100 kilos were as follows :

Wheat, 30 cents ; flour, \$1 ; corn, 25 cents ; meal, 25 cents.

On August 28, 1894, as an effect of the abrogation of reciprocity, these commodities, and all others embraced in the arrangement, came under the operation of another and higher schedule of duties imposed by Cuba, which had been superseded by the lower duties imposed under reciprocity. These higher rates were, for each 100 kilos, upon :

Wheat, \$3.95; flour, \$4.75; corn, \$3.95; meal, \$4.75.

This was substantially prohibition, as appears from the quantity of flour imported into Havana from the United States during the last four months of the following years :

1892, 156,110 bags ; 1893, 105,043 bags ; 1894, 12,995 bags.

The proceedings of the present administration respecting Hawaii form a composite of blunders, cruelty, and usurpation. When Mr. Cleveland entered upon his present term there was absolutely no question between the United States and Hawaii excepting that of annexation under the treaty which had been negotiated during the administration of Mr. Harrison, and which was then under consideration by the Senate. The royal government of Hawaii had been overthrown by a successful revolution. That success had been so complete, and its processes so unexceptionable to all of the representatives of foreign nations at Honolulu, that each of these officials recognized the provisional government immediately after its installation. The act of abdication of the deposed queen, containing also her protest and her submission to the decision of the United States, were before President Harrison prior to the conclusion of the treaty of annexation.

All these were necessarily considered. They were decided by the act of recognition and by the conclusion of the treaty for annexation. So that when Mr. Cleveland assumed the Presidency he found, as to Hawaii, the transaction as perfectly and irrevocably concluded as were the recognition by his predecessors of the republics of France and Brazil. This established, executed, and inviolable status the President of the United States undertook to destroy. His attempt to retract recognition of a nation and to restore its pre-existing form of government stands

unique and unexampled in the history of civilized diplomacy. A nation once recognized so continues. It has become vested with that irrevocable right, so far as the recognizing nation is concerned. Any other rule would subject weak states to most precarious contingencies at the caprice of stronger nations; and it is as to weak states that the sanctity of such principles should be most scrupulously observed. Under these principles it was not for Mr. Cleveland to consider whether the United States forces had assisted in the deposition of the Queen, or whether it had been effected against the will of a majority of her subjects. These questions had been decided by the administration of his predecessor and by other nations when they recognized the new government. There was no more warrant for the President of the United States to reverse or to question this action than there is for him to-day to question the recognition of the republics of France and Brazil.

In disregard, and probably in disdain, of these obvious and well-settled principles, the President proceeded to attempt to "undo the wrong," and instructed our Minister to stand forth before the head of a nation to whom Mr. Cleveland had accredited him and demand that he should abdicate his functions, overthrow his own government and restore the sovereignty to a woman whose inherited barbarism had declared itself in the expression of her determination to execute capitally the leaders of the revolution, to exile their families, and to confiscate their property in the event of her restoration.

The business was covert in its beginning and in its conduct. The United States had at Honolulu a Minister who had been duly appointed by President Harrison and confirmed by the Senate. But the sinister work was not to be intrusted to him or to a regularly appointed and confirmed successor. It was confided to an emissary—at once emissary and unconfirmed ambassador—styled "Commissioner," commended by President Cleveland to President Dole as to his "great and good friend," invested by his letter as with "paramount authority" in all matters between this government and that of Hawaii, paid from the confidential diplomatic fund, and whose name was never sent to the Senate.

This was plain usurpation of power by the Executive. The Constitution is express upon the necessity for both appointment and confirmation of diplomatic officers. That the inordinate

powers given by the President to Mr. Blount constituted him such an officer and required his nomination and confirmation there can be no doubt. If Mr. Blount was not such an officer then every regularly appointed and confirmed diplomatic official may be subjected to the control of a secret and paramount familiar of the President.

The performances of Mr. Blount; his investigations of the Hawaiian incident preceding the revolution and after its success; his confederacy with the representatives of seditious societies of natives organized to overthrow the government of President Dole and to restore that of the Queen; his receiving communications upon public matters from her and her cabinet, signed by her in her royal name, and by them officially as her ministers; the disturbing hopes that his conduct excited, and was intended to excite, of the restoration of ignorant and sanguinary royalty to rule over men and women of American, English, German, and Scandinavian blood,—need not be more than mentioned. The American people have condemned the devious malpractice in its entirety. Mr. Cleveland's plan having failed, he apparently abandoned it with the statement that the matter had been left to Congress.

The provisional government was succeeded by a republic, which, in its turn, was recognized by all nations. It was hoped that then would end the persecuting animosity of the greatest against the weakest of republics. The hope was vain. Against the warnings of a most competent officer, which subsequent events justified with the accuracy of the fulfilment of prophecy, the United States ship-of-war was ordered from Honolulu. The predicted consequences followed. An English vessel, which had been a smuggler of Chinese into the United States and of opium into Hawaii, was chartered for the kindred work of smuggling arms from a British port into Hawaii to aid a royalist insurrection. The revolt took place; blood was shed and lives were lost; American citizens and property were endangered. After all this had been done, after the attempt for which an opportunity had been afforded had failed, a ship-of-war was ordered from San Francisco to Honolulu. Had the vessel been allowed to remain at that port no revolution would have been attempted; her mere presence would have prevented it. Her departure was the signal and occasion for rebellion.

The malign disposition of the present administration towards Hawaii, and its active hostility to the policy which for more than fifty years has declared to other nations that Hawaii shall never be acquired by any power excepting the United States, are further shown by recent events.

By the existing treaty Hawaii stipulates with the United States not to lease or dispose of any port, harbor, or other territory, or to grant any special privilege or right of use therein, to any other power. In the latter part of the year 1894 commissioners representing the British, Canadian, and Australasian governments appeared in Hawaii, ostensibly for the purpose of obtaining for a private English company the privilege of a station upon one of the islands for a submarine cable to be laid from Canada to Australia. It was not, on its face, a government enterprise. It was that of a private company to be aided by public subsidies, but it was undoubtedly destined, when dominion of one of the islands should be secured, to become the property of Great Britain or Canada. The treaty with the United States does not prohibit Hawaii from granting such a privilege to a private company. In that respect she is as free as any other state. The necessity or motive of the British Government for thus promoting the interests of an enterprise apparently private becomes apparent upon examination of the proposed agreement. It there appears that Necker Island, or Bird Island, or French Frigate Shoals Island, or some other uninhabited island which the British Government may select, is to be leased to Great Britain or its assignees without any limitation as to time except so long as the cable shall be maintained. Why the British Government requires a lease to itself to enable a private company to establish a telegraph station on one of the Hawaiian Islands can be explained not otherwise than by its determination to obtain dominion over one of that group. Great Britain has most providently occupied and possessed several isolated islands in that portion of the Pacific, but none of them is sufficiently near the Hawaiian group to serve the purpose of that power. The President of the United States recommended to Congress that the treaty be so modified as to permit the acquisition of this territory by Great Britain, and thus enable her to instal herself on one of the islands with the advantage of her own cable communications to her dependencies in the South Pacific Ocean and elsewhere. It



is not probable that the United States will consent to this, and it is not correct to say that Hawaii desires it. The cable will, in due time, be laid by this government, or under its authority. It is not desirable that this outwork and bulwark of our commerce and possessions upon the Pacific Ocean shall be preoccupied or co-occupied by any foreign power in the manner proposed by Great Britain in the present instance.

The delivery to China by this Government of the two Japanese students at Shanghai, and their decapitation at Nankin, remain to be considered. It is difficult to discuss this abominable transaction with moderation. The blood of those youths is on our hands. They were under our protection. We gave them up, actively surrendered them by an exercise of executive power, to what we knew was certain death. It is in vain that this administration answers the question, "Where are they?" which civilization asks, by the plea of the first murderer, "Am I my brother's keeper?" The answer is: "What hast thou done? The voice of thy brother's blood crieth unto me from the ground."

War was declared by Japan against China, August 1, 1894. In anticipation of this event the Secretary of State, on July 26, 1894, instructed our *chargé* at Peking by telegram that, China acceding, he should act as custodian of the Japanese legation and afford friendly offices for the protection of Japanese subjects in China, either directly or through consuls acting under his instructions. On the same day the *chargé* instructed by circular the United States consuls in China that, at the request of Japan and with the consent of China, the United States had agreed, in event of war, to take under its protection all Japanese subjects residing in China. On July 31 further instructions to the same effect were given. On August 6 the Tsung-li-yamen wrote to our *chargé* reciting that all Japanese merchants and others residing in China had been placed under the protection of the United States. He also stated that a number of Japanese had been deputed from Tientsin as spies. He threatened severe punishment under the laws of war, but he gave assurances that, although war exists, merchants and other natives of Japan, peacefully pursuing their vocations, will be protected. The yamen repeated these assurances of protection on August 12.

The foregoing summary presents the status assumed by the United States and agreed to by China up to August 18th, 1894.

The two students had been brought into question a few days before that date, as will hereinafter appear. The decisive attack upon them was made in Washington by the Chinese Minister. On August 18th the Secretary of State telegraphed to the *chargé* at Peking that the Chinese Minister had complained that the United States Consul at Shanghai had been protecting Japanese spies, and directing the *chargé* to report immediately and fully. This order produced a very full correspondence between the Secretary, the *chargé* and the Consul, from which the following appears.

Immediately upon the declaration of war the Japanese Legations and consular offices in China were turned over to the United States. At this time there were about 3,000 Japanese in Shanghai. Among them were the young men in question, who are described in a letter from the *chargé* to the Secretary of State as schoolboys, who had resided for a long time peacefully and openly on the French concession. It appears that they had come to Shanghai from Japan three years previously to attend a commercial school to learn the Chinese language and thus to fit themselves for mercantile transactions between the two countries.

The Chinese authorities seeing them on the French concession, where they had lived openly for three years, demanded of the French Consul that he give them up as spies. The only allegation that they were spies was that they were dressed in Chinese clothing. This, it seems, is forbidden to foreigners by the Chinese law, but the prohibition had not been enforced. It was usual for many foreigners in all parts of the empire to thus apparel themselves, and these young men had done so throughout the greater portion of their residence in Shanghai. The French Consul refused to deliver them to the Chinese authorities, but knowing that the American consuls had, under the instruction of their government, assumed the protection of the Japanese residents, he caused them to be arrested by the French police on the French concession where they resided and delivered them to the American Consul. The Chinese authorities demanded them from this officer, who refused until he should receive instruction. It was at this point that the Chinese Minister at Washington made his complaint to the Secretary of State.

The Secretary, after receiving information of the facts as

above detailed, telegraphed the *chargé* on August 21, 1894, that our legation and consulates in China are not authorized to hold Japanese accused of crime against the demands of the Chinese authorities. To this the *chargé* replied, by telegraph, stating the report of the Consul-General that the accused were mere schoolboys, peacefully and openly living at Shanghai. He requested that he be directed to order an examination by the United States Consul in the presence of Chinese officials, and urged that China should not be allowed to inflict barbarous punishment, even if the accused should prove to be guilty.

To this the Secretary, on August 29, replied, by telegraph, that lending good offices does not invest Japanese with extra-territoriality, nor should legations or consulates be made asylums for Japanese who violate local laws or commit belligerent acts. He states that the Consul General should not have received the two Japanese, and is not authorized to hold them. He rejected the suggestion that the Consul act as arbitrator.

This was the decisive death warrant. It was a wide departure from the arrangements made a month before with the consent of China, that the United States Consul should protect the subjects of Japan who conducted themselves lawfully. The result was that the *chargé* ordered the consul to deliver the Japanese to the Chinese authorities, and they were delivered on the 3d day of September, 1894. In the meantime the Chinese viceroy at Nankin had been inquiring with great solicitude why the heads of the spies had not been sent to him. The young men were taken from Shanghai to Nankin. They were subjected to frequent examinations. Examination in Chinese criminal procedure is torture, and no reliance is to be placed on the alleged information that they were not tortured. Under the law of that Empire conviction is had only after confession, and confession is extorted by most ingenious and excruciating torture. It is to be presumed that the judge who tried these youths proceeded according to the laws of the Empire, especially when it is considered that its penal code provides for the flagellation of the judge himself with a bamboo in case he fails to proceed according to law. Finally, on the 8th day of October, 1894, the students were beheaded at Nankin. Before these young men were delivered up, the Secretary of State exacted a promise from the Chinese Minister that they should not be tried until the return to Peking of Mr. Denby, the

American Minister, who was then on his way from the United States to China. This promise was violated by the trial and execution of the students before Mr. Denby arrived in China.

The conspicuous fact which stands in the forefront of this transaction is that the protection which the United States agreed to give to Japanese in China was, by the consent and agreement of the latter power, reiterated by acknowledgment after the war had begun. So that there is really no question here, such as sometimes arises when diplomatic protection is given in the territory of a power which has never given its consent thereto. This obvious consideration should have been decisively applied by this government as a reason why it could not, and would not, deliver up the students in the manner it did upon mere accusation and demand, and without any proof. But, laying this controlling consideration out of the case, as the department laid it out, the action of this government must stand condemned both upon principle and precedent.

The right of asylum is warranted by the law and practice of nations, although there has been much controversy between the jurists upon what particular principle it is based. That it can stand upon the extraterritoriality of the diplomatic premises, was formerly asserted in theory and maintained in practice in all civilized countries. In the growth of civilization, and by the certainty that humane justice will be dealt to every offender, and from the inconvenience and frequent scandal of its exercise, the right of asylum on this ground has theoretically ceased to exist in Europe, except as to Spain.

The right to grant asylum exists, nevertheless, everywhere under certain circumstances which justify its assertion. It is not derived from any other principle of international law. It is a principle in itself.

Even as to the nations of Europe recent exceptions to the disuse of the principle have not been infrequent. The United States Minister protected the German residents of Paris from the violence of the Commune, and his action was universally commended. The right has survived as to Spain. In 1841, the Danish *chargé* protected in his dwelling a number of the leaders of a conspiracy to seize the queen and to overthrow the ministry of Espartero. In 1848, Mr. Bulwer, the British Minister at Madrid, gave like protection, and the houses of the other foreign

ministers were crowded with refugees. During the revolution in Greece, in 1862, refuge was granted in the legations to persons whose lives were in danger. The right remains as to several of the South American States and has been exercised frequently. The American Minister to Paraguay protected subjects of European nation from the merciless power of Lopez. Minister Egan made the American legation a sanctuary of protection during the recent civil war in Chili, and when that government proposed to search the legation, threatened to shoot any one who should make the attempt. The right and duty have survived in Spain and South America because retribution in those countries has always been prompt and sanguinary.

As to barbarous and semi-civilized nations the right and duty have always existed, and have always been asserted, until in the present instance.

These Japanese had been residents of the French concession for three years. Their presence at the American legation was not only rightful, but it had been invited by the arrangement for the protection by this government of Japanese residents, to which China had assented. Safety during the war to law-abiding Japanese had been promised by China. In case of a charge that any Japanese had committed an offence he was entitled to the proceedings necessary for the reclamation and extradition of alleged criminals, and he was not liable to be lawfully given up on a verbal demand, based upon a charge unsupported by evidence.

With the consent of China, and at the request of Japan, the United States had undertaken the protection of the Japanese. Thousands of these, relying upon that protection, had come to the treaty ports from the interior of China, and one thousand of them were in Shanghai at this time. They supposed, and had the right to suppose, that protection meant what the word means. After the situation had come to be as described, it was suddenly revealed by instructions from Washington that protection means merely "good offices," verbal influence, persuasion, entreaty, anything but action. And a practical definition was given by this government of this phrase, "good offices," by delivering these students to their executioners, upon the promise of the Chinese Minister that they should not be tried until the return to China of the American Minister. There is one parallel to "good offices" of this character. The familiars of the Inquisition always

delivered the tortured heretic to the secular arm, to be burned at the stake, with most touching entreaties not to harm him.

The United States received these students from the French Consul, who delivered them upon the faith of the undertaking of the United States to protect them. The French Minister at Peking declared that the Consul would never have surrendered them to China, and that he had no right to do so. When the United States determined, at the instance of China, to violate its undertaking to protect, and to convert existing protection into a surrender of the captive, with a plea for mercy, it should have insisted that the credulous victims of its promises should be placed in the position they occupied when they were transferred to our custody. It was the duty of this government to return them to the French concession whence they had been taken, and to the French Consul, for he also had been misled.

There is another point of view from which the enormous delinquency of our government can be contemplated. Whatever may be the correct principle of the right and duty of asylum, no government ever gives up a fugitive or refugee as an act of executive power upon the mere verbal demand of another government that the accused is wanted; nor is such a delivery ever made upon the mere statement of the accusing government that the fugitive has committed a crime. There must be formal demand and enough proof to show that there is probable cause to believe that a crime has been committed, and that the accused is guilty. This proof sometimes consists of sworn complaints made to the tribunals of the demanding government. Sometimes proof in addition to this is required.

This is the practice among civilized nations, where humane trial and usage of the accused are matters of course. But in this case, in which these youths were delivered by this government like dumb brutes into that vast abattoir of torture, mutilation, and butchery known as Chinese law, none of these protections was thrown over them. The demand was verbal; it was sustained by no proof except the pretext that the students had continued to wear Chinese raiment for about a week after it had been declared. They had worn it without question for more than a year, as other foreigners had done in many parts of the Empire. The papers found upon the students after their arrest are not in the official correspondence. This government in delivering the

victims seems also to have delivered the evidence which was to destroy them. No copies seem to have been retained. They probably were of little incriminating force except in a Chinese court, where torture is the expounder of evidence and the producer of confessions. But the Consul assured the Department of State that the papers were such as any students might prepare in the course of their instruction, and expressed his belief that the youths were innocent.

The Secretary of State ordered that persons accused of crime must be surrendered. This is not the law. Mere accusation does not warrant such surrender. This Government was not bound to actively exert its executive power by giving up these youths upon the mere statement of a Chinese official that they were spies. Our representatives in China requested the Department to allow them to retain the refugees until their criminal character and acts could be investigated. This request was not granted. China was not entitled, upon the most adverse construction of the laws against the students, to require the United States to perform the active function of delivery of the accused simply because they were Japanese. Accusation was necessary of some kind, and in support of accusation proof was necessary to show the probability of their guilt before this Government could be bound, under any construction of the law, to deliver them up. Upon whom was the duty, in whom was the right, to pass upon this proof? Certainly not the Chinese demandant. Such a construction takes out of the case and subtracts from the law of such cases the very essential and requisite of proof.

The charge was that these students were spies. The circumstances and antecedents of the accused demonstrate its improbability. There was not then a Japanese soldier on the soil of China. No Chinese army or military lines were anywhere near Shanghai. The accused were residents of the French concession. It is not asserted that they even went beyond its limits. They were not spies under any definition, even if their pockets had been found stuffed with military information.

Mr. Hall, in his work on International Law, gives this definition :

**"A spy is a person who penetrates secretly, or in disguise, or under false pretences, within the lines of an enemy, for the purpose of obtaining military information for the use of the army employing him."**

Mr. Winthrop, in his treatise upon Military Law, furnishes the following definition :

"A spy is a person who, without authority and secretly, collects material information within the lines of one of the hostile armies, with a design of imparting it to the other."

It is apparent, not only that the students were not guilty, but that no offence whatever had been committed. This crime is not a civil offence. It is a military offence, under the international law which prescribes the laws of war. The department should have refused to deliver these men, upon the ground that they were not spies under any definition outside China.

Switzerland has no diplomatic or consular representative in China, and citizens of that Republic are under the protection of the Minister and Consuls of the United States. If war should break out between Switzerland and China the United States would be bound, by this, its own precedent, to deliver up to certain death any Swiss refugee whom China accused of being a spy.

War, at some time, between the United States and China is a very probable event. Suppose it should begin. Hundreds of American missionaries, men and women, wearing the Chinese garb, as the correspondence shows many of them to do, would take refuge in the legations and consulates of Great Britain, France, and Germany. China, producing this American case strictly in point, could demand them as spies or as offenders otherwise. Of course not one of those puissant nations would follow the ruling of the United States, even as against its own citizens. But, according to Secretary Gresham, they would by refusal to do so transgress neutrality, abuse the principle of extra-territoriality, violate international law, and generally place themselves in a position of great logical unpleasantness.

Looking at our bloody hands, well may we say, "This is a sorry sight." What no nation would do, or has ever done, we have done. The Eagle has been made a hunting-hawk for China, and most skillfully and fatally did she strike her quarry.

The conduct of our foreign relations during the last two years has not reflected honor upon this country.

CUSHMAN K. DAVIS.